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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,277	03/23/2001	Gholam A. Peyman	41441	4578

1609            7590            10/15/2002

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.  
1300 19TH STREET, N.W.  
SUITE 600  
WASHINGTON,, DC 20036

EXAMINER

SHAY, DAVID M

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 10/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

Responsive to communication(s) filed on September 27, 2002

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- Claim(s) 1-35 is/are pending in the application.  
Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 Claim(s) \_\_\_\_\_ is/are allowed.  
 Claim(s) 1-35 is/are rejected.  
 Claim(s) \_\_\_\_\_ is/are objected to.  
 Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.  
 The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.  
 The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.  
 The specification is objected to by the Examiner.  
 The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).  
 All  Some\*  None of the CERTIFIED copies of the priority documents have been received.  
 received in Application No. (Series Code/Serial Number) \_\_\_\_\_  
 received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- Notice of Reference Cited, PTO-892  
 Information Disclosure Statement(s), PTO-1449, Paper No(s). 5-6  
 Interview Summary, PTO-413  
 Notice of Draftsperson's Patent Drawing Review, PTO-948  
 Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 24-31 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 24-30 are incomplete as a system is recited in the preamble, yet no structural cooperation or linkage between the separate elements is claimed. In claim 31, the meaning of the term "he ocular gel" is unclear.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 7-13, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al ('586) in combination with Simon. Bille et al ('586) teach a method of forming a pocket in the stroma using an ultrashort pulse laser. Simon teaches forming an intrastromal pocket and inserting a gel which is then allowed to set and can then be adjusted. It would have been obvious to the artisan of ordinary skill to employ the laser of Bille et al in the method of Simon, since this could form the intrastromal pocket much more, precisely than the mechanical device of Simon and will not accidentally perforate the lamellae; or to employ the implant of Simon in the method of Bille et al ('586), since this would provide an adjustable correction, as taught by Simon, and to irradiate the gel to expand or contract the gel, since this would enable

adjustment of astigmatism, and to set the gel chemically since this is equivalent to crosslinking by irradiation and provide no unexpected result , thus producing a method such as claimed.

5. Claims 5, 6, 14, 15, and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al ('586) in combination with Simon as applied to claims 1-4, 7-13, and 17 above, and further in view of L'Esperance, Jr. ('913). L'Esperance , Jr. ('913) teaches correcting vision by firing an excimer laser at the external surface of the cornea to ablate it. It would have been obvious to the artisan of ordinary skill to include the step of ablating the exterior surface of the cornea since this could be used to 'fine tissue" the correction produced by the implant thus producing a method such as claimed.

6. Claims 24-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al ('586) in combination with Simon and L'Esperance, Jr. ('913). The teachings of L'Esperance, Jr. ('913), Simon, and Bille et al ('586) are substantially as set forth above. It would have been obvious to the artisan of ordinary skill to assemble these elements into a system to perform the method as claimed in claim 18 and to employ collagen which shrinks when exposed to laser energy and a hydrogel which expands when exposed to chemical energy, thus producing a system such as claimed.

7. Claims 31, 34 and 35 are ('586) in combination with Simon rejected under 35 U.S.C. 103(a) as being unpatentable over Neefe as applied to claims 1-4, 7-13, and 17-19 above, and further in view of Neefe. Neefe teaches the use of a mold to reshape the cornea. It would have been obvious to the artisan or ordinary skill to employ a mold in

the method of Bille et al ('586) or Simon since this would be more precise and less cumbersome than the manual massage method of Simon for the removal of excess gel, thus producing a method such as claimed.

8. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al ('586) in combination with Simon and Neefe as applied to claim 31 above, and further in view of L'Esperance ('913). The teachings of L'Esperance ('913) and the motivations for combination thereof are essentially those already set forth regarding claim 18. Thus it would have been obvious to the artisan of ordinary skill to combine these old and well known teachings to produce a method such as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Shay whose telephone number is (703) 308-2215. The examiner can normally be reached on <sup>4e</sup> ~~Monday~~-Friday. <sup>dm</sup>

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, <sup>0994</sup> ~~Linda Dvorak~~ <sup>dm</sup> ~~Angie Skyes~~ can be reached on (703) 308-5184. .

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

David Shay:bhw  
October 4, 2002

  
DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330